

REMARKS

Claims 1-21 were pending in this application.

Claims 1-21 have been rejected.

No Claims have been amended.

Claims 1-21 remain pending in this application.

Reconsideration and full allowance of Claims 1-21 is respectfully requested.

I. REJECTIONS UNDER 35 U.S.C. § 102

The Office Action rejects Claims 1-6 and 15-21 under 35 U.S.C. § 102(b) as being anticipated by European Patent Application EP 0 844 582 to Khosravi et al. ("*Khosravi*"). The Applicants respectfully traverse this rejection.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Khosravi discloses a method for detecting a human face in a video image using a model-based approach. The foreground regions of a video image that include people are segmented from the background regions of the video image, and the head(s) of people are detected using either a one-person or two-person foreground model selected by computing the probabilities of the input given each of the models. (*Khosravi*, Page 3, Lines 25-51). Using the selected model, elliptical regions

potentially including human faces are determined by measuring the ratio of the number of foreground pixels classified as “face” and background pixels classified as “non face” in each elliptical region. (*Khosravi*, Page 5, Lines 12-51).

Khosravi lacks any mention of “an enhancement controller capable of enhancing a parameter of said at least one pixel,” as recited in Claims 1, 15 and 19 of the present application. The Office Action relies on the video processor 140 of *Khosravi* as anticipating the “enhancement controller.” However, the video processor 140 in *Khosravi* does not enhance a parameter of a pixel of the image. Instead, the video processor 140 merely processes received pixel data to segment the foreground regions into elliptical regions potentially including human faces using a head detection algorithm. (*Khosravi*, Page 4, Lines 22-48). The “parameters” that the Office Action refers to in *Khosravi* are coordinates (x,y) of pixel locations that define the elliptical regions potentially including human faces. (*Khosravi*, Page 4, Lines 33-47). As understood in the art, pixel locations are fixed. Therefore, the video processor 140 in *Khosravi* does not enhance or modify the pixel locations, but rather merely determines which pixel locations define the elliptical regions.

For at least these reasons, *Khosravi* fails to anticipate the Applicants’ invention as recited in Claims 1, 15 and 19 (and their dependents). Accordingly, the Applicants respectfully request the withdrawal of the § 102 rejection and full allowance of Claims 1-6 and 15-21.

II. REJECTIONS UNDER 35 U.S.C. § 103

The Office Action rejects Claims 8-13 under 35 U.S.C. § 103(a) as being unpatentable over *Khosravi*. In addition, the Office Action rejects Claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Khosravi* in view of U.S. Patent Application No. 2003/0002732 to Gossett et al. (“*Gossett*”). The Applicants respectfully traverse these rejections.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As described above, *Khosravi* fails to disclose, teach or suggest “an enhancement controller” as recited in Claims 1 and 8. The Office Action does not cite *Gossett* as disclosing, teaching or suggesting these elements of Claims 1 and 8.

As a result, the Office Action fails to establish a *prima facie* case of obviousness against Claims 7 and 8-14. Accordingly, the Applicants respectfully request the withdrawal of the § 103 rejection and full allowance of Claims 7 and 8-14.

III. CONCLUSION

As a result of the foregoing, the Applicants assert that the claims in the application are in condition for allowance and respectfully requests an early allowance of such claims.

SUMMARY


If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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